

may wish to conduct to take changed circumstances into account.

IV. THE COMMISSION SHOULD NOT RELY ON AVOIDED COSTS IN ESTABLISHING THE DEFAULT PAYPHONE COMPENSATION RATE; IF IT NEVERTHELESS DECIDES TO USE SUCH AN APPROACH, IT MUST USE GREAT CARE IN DEFINING ITS METHODOLOGY TO AVOID OVERCOMPENSATING PSPS AT THE EXPENSE OF CARRIERS AND CONSUMERS.

Under an avoided cost analysis, the Commission would set the payphone compensation rate for coinless calls by deducting costs related to local coin calls from the local coin rate. As AT&T (pp. 2-3, 13-16) showed, the Commission should not adopt such a method, because it inappropriately compares the price of coin calls with the costs of coinless calls.⁵⁵ Moreover, such a methodology is more likely to overcompensate PSPs. However, if the Commission decides to use such an approach, it must carefully choose the factors it will apply in that analysis.

First, the Commission must set a properly estimated local coin price, which should be 25 cents, not

⁵⁵ See also Warren-Boulton Declaration, p. 6. Even Peoples (p. 8), the largest independent payphone provider ("IPP") agrees with AT&T that "it is inappropriate to use a market-based surrogate and then adjust it for costs." Rather (id.), Peoples argues, and AT&T agrees, that "the appropriate comparison . . . examines the difference in costs between local coin calls and dial around calls." See also MCI, p. 3 (if the Commission uses a "top down approach, it should deduct coin-specific costs from the cost of coin calls, not the market rate for such calls).

the 35 cent rate the Commission derived from looking at an unrepresentative sample of rural states. Then, the Commission must determine all of the actual avoided costs related to coinless calls. As the D.C. Circuit recognized, these fall into two categories: (1) the costs associated with the handling of coins, which include costs for coin rating, the collection of deposited coins, and the costs associated with the protection of deposited coins and the maintenance of coin-specific features of coin phones; and (2) the costs of completing local coin calls. Finally, contrary to the PSPs' claims, there are no legitimate costs that should be added if the Commission applies an avoided cost analysis.

A. The Commission Significantly Overestimated The Assumed "Market Price" For Deregulated Local Coin Calls And Should Apply A 25 Cent Rate For Such Calls.

The first step in an avoided cost analysis is to determine the appropriate local coin rate from which coin call-related costs will be deducted. The 35 rate used by the Commission in the Payphone Orders, however, is not reasonably reflective of a national deregulated local coin rate. The appropriate rate is 25 cents.

The Commission's estimated 35 cent "market price" for deregulated local coin calls was based on rates from a

small and unrepresentative sample of rural states.⁵⁶ To the extent there are cost differences in providing payphones, it is reasonable to assume, as the RBOC/LEC Coalition does,⁵⁷ that costs in rural states would be higher than elsewhere, and that such costs would be reflected in their rates.⁵⁸ On the other hand, the Commission ignored that there is a 25 cent deregulated local coin rate in Montana and South Dakota, which are also rural states. Moreover, it also appears that 25 cents is a fair market rate in urban states such as Massachusetts, where NYNEX sought a 25 cent rate (based on its total costs of 16.7 cents per call) earlier this year.⁵⁹ According to published reports, there are over 58,000 LEC payphones in the states where PSPs can (or seek to) charge a 25 cent "market" rate, but only about 22,000 such payphones in the states with a 35 cent rate.⁶⁰ Thus,

⁵⁶ The Commission relied on the deregulated local coin rates in Iowa, Nebraska, North Dakota and Wyoming.

⁵⁷ RBOC/LEC Coalition, Hausman Declaration, p. 27 (rural areas have "higher costs"). See also MIDCOM, p. 5; RCN, pp. 3-4; TRA, p. 21.

⁵⁸ See also Competition Policy Institute, p. 3 (noting that the 35 cent deregulated rate may not be the competitive rate but rather a monopoly rate); Warren-Boulton Declaration, p. 4 (deregulated and competitive are not synonymous terms).

⁵⁹ AT&T, pp. 12-13.

⁶⁰ The total number of reported LEC payphones is as follows: Iowa, 8,719; Nebraska, 7,957; North Dakota,

the predominant local coin rate is 25 cents, and, to the extent the Commission decides to use an avoided cost analysis based on an assumed deregulated local coin rate, it should base its analysis on a 25 cent rate.

B. The Avoided Costs Related To Coin Calls Are At Least 12.5-17.5 Cents Per Call.

The Robinson Affidavit (§ 21) concluded that a top-down avoided cost analysis should result in an offset of at least 50% to account for the demonstrable differences in the costs of coin and coinless calls and the likelihood that such a calculation would contain excessive commission costs or PSP profits.⁶¹ Mr. Robinson's Reply Affidavit (§ 18) reviews PSPs' cost figures and calculates an appropriate avoided cost range. Based on that review, the actual avoided costs are between 12.5 and 17.5 cents per call, including the call completion costs described below.

C. The Commission Must Pierce Through The PSPs' Sham Arguments Regarding Completion Costs For Local Coin Calls And Apply A Cost Between 5 And 8 Cents.

The PSPs have argued that few or no costs should be assigned to the completion of local coin calls, because

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2,551; Wyoming, 3,105; Massachusetts, 51,463; South Dakota, 3,283; and Montana, 3,539. FCC Statistics of Common Carriers, 1995/1996 Edition, Table 2.5.

⁶¹ See AT&T, pp. 13-16.

LECs are increasingly moving to the use of flat-rated payphone lines, i.e., lines for which the LEC does not impose separate usage charges for completion of local calls.⁶² If the Commission credits these baseless arguments, it will significantly overcompensate LECs and PSPs at the expense of carriers and consumers.

The LECs' movement to flat-rate pricing does not demonstrate that there are no costs associated with completing local coin calls, only that they are changing the way they recover those costs. The RBOC/LEC Coalition's arguments here are simply a strategy to double-recover those costs -- once from PSPs and a second time from carriers who will pay the LECs' PSP affiliates. The Commission should not countenance the LECs' transparent attempts to overrecover.⁶³ Rather, it should ignore all claims that PSPs incur no "avoided costs" when a coinless call is placed over a flat-rated payphone line and assess avoided costs at

⁶² See, e.g., RBOC/LEC Coalition, p. 7; CCI, n.7; Peoples, p. 11.

⁶³ IPPs have also benefited from the LECs' pricing actions. As TEI (n.15) states, "measured service tariffs for payphone lines . . . are rarely used . . . because they result in much higher costs" for most payphones. IPPs' economic decisions, however, should not be permitted to add unjustifiable costs to carriers' and consumers' payphone obligations.

the 5-8 cent level charged by LECs who have not yet concealed how such call completion costs should be assessed.

By having their affiliated PSPs -- who own over 75% of all payphones -- pay for the costs of local call completion in flat-rated payphone line charges, the LECs assure that they are paid for the costs of completing local coin calls. AT&T does not dispute the LECs' right to recover these costs once, e.g., from PSPs in usage charges they can assign directly to coin calls. The LECs, however, want more.

Despite the fact that the LECs' local coin call completion costs have already been paid and should be assessed against coin callers, the RBOC/LEC Coalition's PSP affiliates are seeking to recover a portion of these same costs in payphone compensation, by claiming there are no "avoided costs" for coinless calls when they use flat-rated payphone lines.⁶⁴ Through this ruse, they are attempting to have carriers who only originate coinless calls pay a part of their costs to complete local coin calls in the payphone compensation rate. The D.C. Circuit found that this would be blatantly improper,⁶⁵ and the Commission should thus

⁶⁴ RBOC/LEC Coalition, pp. 15-16.

⁶⁵ Slip Op. at 15-16.

refuse to include such costs in calculating compensation for coinless calls.

Further, in assessing the amount of avoided costs related to local coin call completion, the Commission should not be guided by the cost figures provided by the PSPs, which average many artificial "zeros" with actual call completion rates.⁶⁶ Based on direct information provided both by APCC (Attachment 2) and the RBOC/LEC Coalition (Andersen Report, p. 4), where LECs charge separately for the costs of local coin call completion, the per-call charges typically range from about 5 to 8 cents.⁶⁷ Therefore, the Commission should assign an avoided cost in this range for the costs of local call completion.

D. PSPs Are Not Entitled To Recover Any Additional Costs For Flex ANI And "Collection" Costs, And In All Events, Their Claimed Costs Are Exaggerated.

Evidently not content arguing merely for a compensation rate that vastly overpays them, PSPs claim additional amounts that would "pay" them for the costs of getting paid. Specifically, the PSPs assert that there are

⁶⁶ See, e.g., APCC, Attachment 2; RBOC/LEC Comments, Andersen report, p. 4.

⁶⁷ Lacking the information reported by payphone owners, AT&T (pp. 9-10) attempted to compute a cost for call completion using a derived analysis. The facts produced by the PSPs themselves, however, show that AT&T's estimate was significantly understated. See Robinson Reply Aff., ¶ 11.

two additional costs -- Flex ANI costs⁶⁸ and payphone compensation "collection" costs⁶⁹ -- that should be taken into account in determining the per-call compensation rate. As shown below, given the rules the Commission has established for payphone compensation, neither should be included at all, but in all events the PSPs' assertions regarding the amount of such costs are exaggerated.

First, the Commission recognizes that carriers have no bargaining power vis-a-vis PSPs unless they have the ability to identify and block payphone calls in real time.⁷⁰ In order to be able to do so, however, carriers must have real time access to ANI codes that identify payphone calls, and the Commission properly required PSPs to provide such data.⁷¹ But even assuming that carriers receive these data, they cannot block calls from payphones without expending enormous additional resources to build blocking capabilities in their networks and to maintain the payment processes

⁶⁸ RBOC/LEC Comments, pp. 17-19.

⁶⁹ APCC, pp. 14-15; Peoples, pp. 12-13; CCI, pp. 11-12.

⁷⁰ 800 subscribers are actively demanding the ability to block payphone calls. See MCI, p. 4. See also, ex parte letter dated August 13, 1997 in CC Docket No. 96-128 from Robert H. Castellano, AT&T to William F. Caton, p. 6.

⁷¹ Reconsideration Order, 11 FCC Rcd at 21265-66; D.C. Circuit Order, Slip Op. at 15.

needed to support such a system.⁷² Thus, contrary to the RBOCs' claim, the costs for establishing the delivery of Flex ANI data are properly borne by the PSPs as a set-up cost for the payphone compensation mechanism.

Indeed, in establishing its payphone compensation rules, the Commission required carriers to track payphone calls, to collect the money needed to pay such compensation from customers, and to remit payments to PSPs. To do that, AT&T and other carriers have spent millions of dollars to develop tracking systems, and must spend further millions of dollars in ongoing expenses for payment systems needed to remit compensation to PSPs. Carriers have also had to manage the challenge of attempting to collect the costs of payphone compensation from customers in their rates, as the Commission anticipated they would. No one has suggested that the carriers should be reimbursed for these efforts.⁷³ Nor should the PSPs be entitled to pass on to carriers and customers the PSPs' implementation costs for a system that

⁷² See AT&T, pp. 16-18. See also CWI, pp. 11, 13 (noting that it is only able to provide a "least common denominator" type of blocking, which itself required difficult and costly development); GCI, p. 3 (smaller IXCs cannot effectively negotiate a lower compensation rate with the thousands of PSPs); MCI, p. 4 (even larger carriers face similar problems).

⁷³ See CWI, n.7; Frontier, p. 10.

will generate billions of dollars in revenues for them over the next few years and beyond.

Similarly, there is no basis for the IPPs' claims that they should be compensated for "collection costs."⁷⁴ Unlike the typical business arrangement, in which a supplier tracks usage and bills its customers, the Commission has not required PSPs either to track or render detailed bills for payphone compensation. Instead, as noted above, it has required switch-based carriers to assume all of those administrative functions and their associated costs, which include both network infrastructure costs and ongoing processing expenses.⁷⁵ Thus, carriers are already paying the tracking and payment processing costs for payphone compensation, and there is no reason why they should be required to bear PSPs' so-called "collection" costs -- costs which the PSPs would not incur at all if they performed the tracking and billing functions themselves.

In all events, the PSPs' cost claims regarding these functions are highly overstated. The RBOC/LEC Coalition's assertion (p. 18) that they face a cost of 5 to 8 cents per call for providing Flex ANI data to carriers is based on a highly flawed analysis. The \$757 million

⁷⁴ See, e.g., CCI, p. 11.

⁷⁵ See AT&T Comments, pp. 16-18.

implementation cost to implement Flex ANI in every LEC end office is based on an analysis provided by USTA. That analysis⁷⁶ shows that well over half a billion dollars (over \$580 million) of those costs are to upgrade (and in some cases replace) 4,500 non-equal access switches that serve only a tiny fraction of the nation's access lines and payphones.⁷⁷ AT&T acknowledges that it would be unreasonable to require small LECs, PSPs, or anyone else, to bear such huge costs solely for the purpose of providing data regarding a relative handful of payphones. Moreover, contrary to the RBOC/LEC Coalition's assumptions, it is unreasonable to allocate costs which affect only a few payphones across all payphones nationwide. Rather, an alternative mechanism should be applied to compensation for payphones served by non-equal access switches.⁷⁸

⁷⁶ USTA, Attachment, pp. 4-5.

⁷⁷ Less than 2 percent of the total access lines in the country are in non-equal access areas FCC Statistics on Communications Common Carriers, 1995/1996 Edition, Table 2.3. In addition, according to Cincinnati Bell's clearinghouse, fewer than 2% of all ANIs submitted by IPPs for dial-around compensation are in non-equal access areas.

⁷⁸ For example, AT&T would support a waiver request from non-equal access LECs that would permit PSP phones served by their switches to continue to receive per-phone compensation, as occurred when AT&T received its waiver to pay per-call compensation for dial-around calls. Such a waiver would, however, require a new traffic study which tracks the average number of

Accordingly, the only possible cognizable costs would be the \$171 million claimed to be needed to upgrade existing equal access switches to enable them to provide Flex ANI. Using a similar analysis to the one provided by the RBOC/LEC Coalition, Flex ANI costs would be only about 1.4 to 1.6 cents per call in Year 1, declining to zero in Year 8.⁷⁹

Similarly, the IPPs' proposed "collection" costs of 5 cents or more per call are insupportable. First, IPPs' complaints regarding non-payment of per-phone compensation for the initial periods⁸⁰ are clearly atypical, because they reflect carriers' concerns regarding the impropriety of the Commission's rules -- concerns that were clearly vindicated

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monthly compensable calls from such phones, which may be quite different from the national average. Such waivers should continue only for as long as the LECs' switches are not upgraded for equal access. Moreover, the total compensation payable for payphones in areas subject to such waivers should be reduced to reflect the additional expenses carriers would incur in managing an otherwise unnecessary call tracking methodology.

⁷⁹ See Attachment 5. The variation depends upon the base of phones used to determine the cost. The lower cost figure is based on the 2.3 million payphone ANIs that have been reported by Cincinnati Bell. The higher figure is based on an assumption of 2 million payphones.

⁸⁰ E.g., Peoples, p. 13.

by the D.C. Circuit's ruling that the initial system was arbitrary and capricious. There is no basis to extrapolate that experience into the future, once the Commission establishes lawful rules and requires all parties to true up their payments and receipts.⁸¹

Second, complaints regarding the costs of disputes over payment to the proper payphone owner are a function of the PSPs' own activities, and they should not be charged to carriers or consumers. Rather, PSPs who buy and sell stations should make appropriate arrangements in their sales agreements for such contingencies. In all events, the Commission's new rules regarding carriers' payment obligations should significantly reduce any such PSP collection expenses.⁸²

Third, complaints regarding non-payment frequently arise because PSPs have used non-payphone lines for their phones, which do not appear on the LECs' list of known payphones. Again, these problems are created by the PSPs'

⁸¹ In addition, carriers receive no compensation reflecting the increased risk of uncollectables they face in billing and collecting the costs of payphone compensation from their end users.

⁸² Report and Order, 11 FCC Rcd at 20597-98 (once a LEC makes a positive identification of an installed payphone, carriers must accept claims for payment for the payphone's ANI until the LEC provides information, on a timely basis, that the payphone has been disconnected).

own actions, and should not be a reimbursable expense against carriers and consumers.⁸³

Finally, the "cost" figures presented by the IPPs are simply not credible. As shown in the Robinson Reply Affidavit (¶ 14) the costs projected by the PSPs are highly inflated beyond any reasonable amount.

V. THE PER-CALL COMPENSATION RATE CANNOT BE BASED ON 0+ COMMISSION PAYMENTS OR HIGHER THAN THE LOCAL COIN RATE.

Both the APCC (pp. 8-9) and the RBOC/LEC Coalition (pp. 24-25) seek to revive the already-rejected argument that the Commission should adopt a "market based" compensation rate that reflects the commission rate IXCs have paid on 0+ calls. There is no basis for the Commission to do so. The RBOC/LEC Coalition (pp. 34-35) also suggests that the payphone compensation rate should be higher than the local coin rate. Neither economic theory nor logic supports this result.

The simple answer to the PSPs' efforts to revive references to 0+ commissions (or other surrogates such as

⁸³ There is also no basis for CCI's purported "concern" (n.14) regarding the accuracy of AT&T's tracking systems. Indeed, at a recent trade meeting, APCC's president and counsel dispelled any such issues and described AT&T's systems as "very reliable" (Robinson Reply Aff., ¶ 16).

the 0- all transfer rate)⁸⁴ is that the Commission has already rejected that approach for valid reasons. Even APCC (p. 8) admits that the Commission has rejected this approach. Moreover, the use of any surrogates that do not relate to actual payphone costs cannot lead to a fair rate, as required by the statute.

The Commission has clearly rejected the use of 0+ commissions as a surrogate for payphone compensation, because it correctly concluded that commissions include "factors" which are not associated with the use of the payphone for access code and subscriber 800 calls.⁸⁵ Indeed, the only reason the Commission looked at AT&T 0+ commissions in 1992 was because AT&T's operator services at that time were regulated, and the Commission believed that this would constrain AT&T from paying "monopoly rents" to location owners.⁸⁶ Since that time, AT&T has been declared non-dominant, and its rates have declined. Nevertheless commission rates continue to escalate, providing clear proof that location commissions reflect monopoly rents.

⁸⁴ See APCC, pp. 9-10 (suggesting that LEC 0- transfer rates and IXCs' sent-paid call surcharges -- neither of which has any relationship to a PSPs' costs -- as other possible "market surrogates").

⁸⁵ Report and Order, 11 FCC Rcd at 20577.

⁸⁶ 1992 Order, 7 FCC Rcd at 3257.

There is another important reason why 0+ commissions cannot rationally be used as a surrogate for non-0+ coinless calls. Unlike access code calls, which a customer specifically intends to be directed to a particular carrier, operator services providers ("OSPs") pay commissions on 0+ calls because they enable the OSP to receive traffic from customers who otherwise might not have used that carrier at all. Thus, unlike dial-around access code calls (which OSPs have already spent marketing dollars to acquire) or 800 subscriber calls, 0+ calls can bring added revenues to carriers.⁸⁷ Accordingly, access to the 0+ position on a payphone logically commands a higher market price, and 0+ commissions cannot reasonably be used for any purpose in connection with calculating a fair compensation for dial-around access code calls or 800 subscriber calls. Indeed, Frontier (p. 8) correctly recognizes that basing payphone compensation on 0+ commissions "would effectively allow payphone providers to receive monopoly rents on all traffic, not merely 0+ calls" (emphasis in original)).⁸⁸

⁸⁷ 800 subscriber calls are automatically routed to the subscriber's chosen carrier. Thus, by definition, toll-free carriers cannot increase their revenues by marketing to, or receiving additional revenues from, payphone callers.

⁸⁸ See also ITA, p. 6 (same; also properly noting that the growth of dial-around calling "was a direct result of consumer resistance to . . . often excessive OSP

VI. INTERIM PER-PHONE COMPENSATION ISSUES.

The commenters generally agree with AT&T (pp. 19-20) that the Commission's revised interim per-phone compensation scheme should be based on the per call rate it establishes on remand.⁸⁹ In addition, the commenters, including the RBOC/LEC Coalition (pp. 34-35), generally acknowledge that, in accordance with the D.C. Circuit's decision, the Commission should require contributions from all carriers that offer coinless calls, including small IXCs and LECs.⁹⁰

A number of commenters further support AT&T's view (p. 20) that total toll revenues of all participating carriers is the most appropriate basis for calculating their respective obligations, because general information does not exist regarding the handling of dial around and 800 subscriber traffic from payphones.⁹¹ Moreover, AT&T (id.)

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charges" for 0+ calls); Warren-Boulton Declaration, p 7.

⁸⁹ See, e.g., RBOC/LEC Coalition, p. 33; Sprint, p. 15; Worldcom, p. 5.

⁹⁰ E.g., CWI, p.p. 14-15; CompTel, p. 15; Excel/Telco, pp. 1-2; Frontier, p. 12; MCI, p. 6. In contrast, TRA's (p. 4) "disagreement" with the D.C. Circuit's findings must be rejected.

⁹¹ E.g., CCI, p. 22; MCI, p. 7; WorldCom, p. 6.

also showed that data regarding carriers' total toll revenues are currently available. Some commenters suggest that the Commission should use carriers' access code and subscriber 800 revenues to allocate the interim allegation.⁹² However, there is no generally available source for this data.⁹³ Other parties purport to have specific data on calls they received from payphones and suggest basing the interim obligation on this data,⁹⁴ however, most do not have such information.⁹⁵ Given the fact that the interim period will end in a few weeks, the Commission should use the existing total revenue data as the best generally available information.

⁹² CCI, p. 23, MIDCOM, p. 9.

⁹³ The Universal Service Form No. 457 that AT&T suggested (pp. 20-21) that the Commission use to determine the toll revenues of all carriers does not require carriers to report access code and 800 revenues separately from their other toll and operator service revenues.

⁹⁴ See RBOC/LEC Coalition, Andersen Report, pp. 14-15.

⁹⁵ Sprint (p. 13) suggests that the interim obligation be based on each carrier's average number of compensable calls as calculated in November 1997, the first month for which per call compensation is due. It is not appropriate to base the interim obligation for October 1996 through October 1997 on the number of calls carriers will handle in November 1997 because the PSPs have indicated that payphone traffic is increasing (e.g., APCC, p. 18). Thus, Sprint's proposal would overcompensate PSPs for the interim period.

Some PSPs argue that the number of access code and subscriber 800 calls has increased since last year and that the Commission should adjust the flat-rate obligation to reflect more than its initial factor of 131 calls.⁹⁶ Even if this were true, however, the Commission based its calculations on the best available data from five PSPs, who had indicated that it was based on their own recent (1996) monthly call volumes.⁹⁷ Moreover, this is the only portion of the of the interim rate formula that was neither appealed nor rejected by the D.C. Circuit. Accordingly, it should not be disturbed

AT&T (pp. 22-23) agreed that the Commission could direct the presubscribed carrier ("PIC") to pay interim compensation for 0+ calls from BOC payphones where the carrier tracks these calls pursuant to a commission contract with the location owner. AT&T (p. 23) explained, however, that it does not have commission contracts for all payphones for which it is the PIC, and does not track 0+ calls from phones for which it is not the presubscribed carrier. The

⁹⁶ CCI, p. 20 (estimated 157 calls per phone, per month currently being made from payphones); APCC, pp. 17-18 (estimated 152 calls per phone, per month from February 1996 through December 1996); Peoples, p. 15 (estimated 139 calls per phone, per month over the last six months).

⁹⁷ Report and Order, 11 FCC Rcd at 20604.

RBOC/LEC Coalition's data showing the average number of 0+ calls from all their payphones⁹⁸ does not cure this problem. The number of 0+ calls originating from non-contracted phones, which generally do not generate enough 0+ traffic to interest the location owner in entering into a commission contract, is substantially less than the overall average for all BOC phones. Thus, applying this average to non-contacted phones would lead to overcompensation. Thus, the Commission should exclude such phones from the interim obligation.⁹⁹

Finally, the RBOC/LEC Coalition (pp. 38-39), Sprint (pp. 16-17) and AT&T have clearly demonstrated the Commission's unequivocal authority to order a full true-up of payphone compensation back to the first compensation payment each PSP received pursuant to the payphone orders. As AT&T Explained (pp. 7, 24-27), it is imperative that the Commission order the PSPs to refund carriers' overpayments under the Commission's initial unlawful per-phone rules. It is also imperative that the Commission assess the interim

⁹⁸ Andersen Report, pp. 15-16.

⁹⁹ In all events, the call counts for 0+ calls from contracted stations will include dial-around calls placed using the 10XXX access code see AT&T, p. 23).

rate against all carriers that handle compensable calls, as the D.C. Circuit required.¹⁰⁰

There is no basis for the PSPs' claims¹⁰¹ they should be allowed to retain this excessive compensation. First, contrary to their claims, the issue of payphone compensation for subscriber 800 calls was never fully litigated, nor was a compensation rate for these calls affirmatively ordered at any point. The D.C. Circuit's 1995 remand of the Commission's ruling on subscriber 800 calls was pending at the Commission when the Telecom Act passed in February 1996 and mooted the issue.¹⁰² Then, consistent with its new statutory obligations, the Commission promptly adopted rules for these calls within the time limit imposed by Section 276. Thus, PSPs cannot properly claim there was ever a "free ride" for carriers. In all events, any such claim necessarily ended in October 1996 when the Commission's compensation rules took effect. Thus, an adjustment to these rules dating back to the start of those

¹⁰⁰ AT&T also demonstrated (pp. 26-27) that the Commission's authority to order retroactive adjustments does not violate the Communication Act's ban on retroactive ratemaking because the compensation rate is not subject to the filed rate doctrine, from which the ban is derived.

¹⁰¹ CCI, p. 23, APCC, pp. 22-23.

¹⁰² Florida Public Telecommunications Association v. FCC, 54 F.3d 857 (D.C. Cir. 1995).

rules is reasonable and will ensure that PSPs receive fair compensation for these calls.¹⁰³ Further, such an adjustment to the interim obligation will ensure that the carriers which have not paid compensation for all periods will pay the PSPs the fair and lawful compensation rate for the entire interim period.¹⁰⁴

Moreover, contrary to some commenters' inferences, AT&T has announced that it does not intend to profit from the payphone compensation regime. The amount AT&T has billed and collected to date does not approach its liability under the interim rate, much less the costs it has incurred to enable it to begin tracking and paying per-call compensation. In all events, after the Commission sets a lawful rate, AT&T will adjust its customer charges to assure that it does not recover more than the actual costs it has incurred.

Therefore, the Commission should exercise its clear authority to adjust the compensation rate to reflect the rate it adopts here. This is the only way it can assure

¹⁰³ Thus, APCC's argument (pp. 25-26) that the Commission should retroactively compensate PSPs for subscriber 800 calls back to 1992 should be rejected.

¹⁰⁴ CCI argues (pp. 24-26) that the Commission should not further disrupt PSPs' business expectations by adjusting the interim rate. See also APCC, p. 22. However, no PSP can reasonably (or justifiably) rely on an unlawfully arbitrary and capricious rate.

that a fair compensation rate has been consistently applied for PSPs, carriers and consumers.

CONCLUSION

For the reasons set forth above and in AT&T's prior comments in this proceeding, the Commission should:

- (a) set the payphone compensation rate at no more than 12.2 cents per call;
- (b) set the interim per phone compensation rate at no more than \$15.98 per month per phone;
- (c) require all carriers, including LECs, to participate in the payment of interim per phone compensation on the basis of their total toll revenues; and
- (d) order a complete true-up among IXC's and PSPs of all payphone compensation paid or received prior to the issuance of the Commission's order on remand.

Respectfully submitted,

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LIST OF COMMENTERS - CC DOCKET NO. 96-128

Airtouch Paging
American Public Communications Council (APCC)
America's Carriers Telecommunication Association (ACTA)
AT&T
Cable & Wireless (CWI)
Communications Central Inc. (CCI)
Competitive Telecommunications Association (CompTel)
Competition Policy Institute
Excel Telecommunications Inc. and Telco Communications
Group, Inc. (Excel/Telco)
Frontier Corporation (Frontier)
General Communication Inc. (GCI)
Inmate Calling Service Providers Coalition (ICSPP)
International Telecard Association (ITA)
LCI International Telecom Corp. (LCI)
MCI
MIDCOM Communications, Inc. (MIDCOM)
NATSO Inc.
Paging Network Inc. (PageNet)
Peoples Telephone Company Inc. (Peoples)
Personal Communications Industry Association (PCIA)
RBOC/GTE/SNET Payphone Coalition (RBOC/LEC Coalition)
RCN Telecom Services Inc.
Sprint Corporation (Sprint)
Telaleasing Enterprises Inc. (TEI)
Telecommunications Resellers Association (TRA)
Teleport Communications Group Inc. (TCG)
United States Telephone Association (USTA)
Worldcom Inc. (WorldCom)
SDN Users Association

ATTACHMENT 2